
Pete Wilson, Governor

Circulation and Notice Under the California Environmental Quality Act

CEQA Technical Advice Series



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The **CEQA Technical Advice Series** is intended to offer CEQA practitioners, particularly at the local government level, concise information about some aspect of the California Environmental Quality Act. This series of occasional papers is part of OPR's public education and training program for planners, developers, and others. This advice is intended to supplement, but not to amend or revise the *California Environmental Quality Act Guidelines*.

INTRODUCTION



The California Environmental Quality Act (CEQA) is, in many ways, a procedural statute. One of the challenges facing the CEQA practitioner is to keep track of all the required and suggested notice, consultation, and review periods promulgated by CEQA and the CEQA Guidelines. In addition, revisions are made to the statute and the Guidelines through legislation and changes promulgated by the Secretary of the Resources Agency. The purpose of this brief paper is to provide an overview of those requirements.

The reader is assumed to have a working knowledge of CEQA. This advisory focuses on notice, consultation, and review without delving into the

other substantive requirements of the Act. For a more complete discussion of this complex law, please refer to the books listed in the bibliography.

The terms “must,” “requires,” and “may” are used carefully in the following advisory. “Must,” or “requires” denotes a mandatory action required by CEQA or the CEQA Guidelines. “May” denotes a suggested, but not mandatory action.

Please note that inconsistencies may exist between the CEQA statute and the CEQA Guidelines. In such instances, it is important to remember that the Act prevails over the Guidelines where clear conflict exists.

CIRCULATION AND NOTICE UNDER CEQA



“Public participation is an essential part of the CEQA process.”

Guidelines Section 15201

CEQA's Guiding Policy

Two of the basic purposes of CEQA are to inform governmental decisionmakers and the public about the potential significant effects, if any, of proposed activities and to provide opportunities for other agencies and the public to review and comment on draft environmental documents. The latter is crucial to the effectiveness of the former. Along these lines, CEQA and the CEQA Guidelines establish a number of specific points during the review and consideration of a project when the lead agency must inform other agencies and the public of the project and its potential environmental consequences.

Julius Caesar wrote that “All of Gaul is divided in three parts.” Coincidentally, the same can be said of the CEQA process. Depending upon the characteristics of a project and its potential for significant environmental effects, CEQA review may pursue either of three basic directions: (1) an exemption (statutory or categorical); (2) a negative declaration (including a mitigated negative declaration); or (3) an environmental impact report (EIR). Requirements for review, comment, and notice vary according to the complexity of the environmental review. A project that is exempt from CEQA has fewer requirements than a project subject to an EIR. In the following sections, we will examine in detail the relative requirements for each level of environmental review.

Exempt Projects

CEQA exempts a number of specific types of projects from its provisions. For example, emergency repairs to public service facilities and specific actions necessary to prevent or mitigate an

emergency are statutorily exempt from CEQA pursuant to Public Resources Code (PRC) Section 21080(b). In addition, the Secretary of the Resources Agency has identified 29 classes of project which are normally exempt from the Act. Exemptions cannot be used for projects which have cumulative impacts, when there is a reasonable possibility that there may be a significant impact due to unusual circumstances, or when there would be an adverse impact on historical resources, for example. Possible exemptions include, but are not limited to, the operation, repair, or minor alteration of existing facilities, replacement or reconstruction of existing structures, and construction or replacement of accessory structures (Guidelines Section 15301, 15302, and 15311, respectively).

In coordination with the Permit Streamlining Act (Government Code Section 65950), the lead agency **must** approve or deny a development project within 60 days from the date it determines that the project is exempt from CEQA.

- **Notice of Exemption** – PRC Sections 21108 and 21152, and Guidelines Section 15062 provide that after approving a project for which an exemption was employed, the lead agency (or the applicant) **may** file a Notice of Exemption with the county clerk. If a state agency files this notice, it must be filed with the Office of Planning and Research (OPR). Appendix E of the CEQA Guidelines contains a suggested format for the Notice of Exemption. Filing a Notice of Exemption triggers a 35-day statute of limitations for litigation. If a Notice of Exemption is not filed, the statute of limitations becomes 180 days from either the date the decision is made to carry out or approve a project, or where no

formal decision is required, 180 days from the date the project is commenced. (PRC Section 21167).

There are no other notice requirements for CEQA exemptions.

Initial Study

The decision whether to prepare a negative declaration or an EIR is based on findings supported by the lead agency's initial study. CEQA and the Guidelines contain a number of consultation suggestions and requirements which are applicable at this stage of the environmental process. Comments received during the initial study consultation allow the lead agency to identify responsible, trustee, and other agencies and their specific concerns. Further, the initial study provides the analyses necessary to determine whether an EIR will be required or a negative declaration may be adopted. This determination is based upon whether it can be fairly argued, based on substantial evidence in light of the whole record, that a project may or may not have a significant effect on the environment. Even if a fair argument can be raised that a project will not have a significant effect on the environment, it will be outweighed where, at the same time, a fair argument can be raised that it will have a significant effect on the environment (Guidelines Section 15064 and *No Oil v. City of Los Angeles* (1975) 13 Cal.3d 68).

- **Preapplication Consultation** - PRC Section 21080.1 **requires** that the lead agency, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment that the proposed project may have.
- **Preconsultation** – PRC Section 21080.3 provides that the lead agency *may* consult informally with responsible and trustee agencies before preparing the initial study.
- **Agency Consultation** – PRC Section 21080.3 **requires** the lead agency to consult with respon-

sible and trustee agencies regarding the project during preparation of the initial study. Note that this supersedes the requirement of Guidelines Section 15063 for “informal” consultation.

- **Applicant Consultation** – Guidelines Section 15063 provides that the lead agency *may* consult with the applicant to determine whether the applicant would be willing to revise the project to mitigate or avoid potential significant effects and thereby qualify for a mitigated negative declaration.

Negative Declaration

A negative declaration may be prepared when, based upon substantial evidence in light of the whole record, the project will not have a significant effect on the environment. In situations where a potential significant effect is identified, but revisions or mitigation measures imposed on the project will avoid or reduce the effect to a level of insignificance, a negative declaration may also be prepared. The following sections summarize the consultation and notice requirements which are applicable at the time the initial study is completed and the decision is made to prepare a negative declaration (including subsequent negative declarations as provided under CEQA Guidelines Section 15162). Please refer to the cited sections of CEQA and the CEQA Guidelines for additional information.

A Negative Declaration circulated for public review **must** include (CEQA Guidelines Section 15071) a brief description of the project, including a commonly used name for the project, if any; the location of the project, preferably shown on a map, and the name of the project proponent; a proposed finding that the project will not have a significant effect on the environment; an attached copy of the Initial Study documenting reasons to support the finding; and mitigation measures, if any, included in the project to avoid potentially significant effect.

- **Notice of Intent to Adopt a Negative Declaration** – PRC Section 21092 and Guidelines Section 15072 **require** the lead agency to provide public notice of its intent to adopt a nega-

tive declaration. Section 21092 establishes the means by which notice is to be given, as well as the contents of that notice.

- **Posting of Notice** – In addition, PRC Section 21092.3 *requires* notice to be posted for 20 days in the office of the county clerk of each county in which the project will be located (30 days if the negative declaration has been sent to the State Clearinghouse).
- **Notice to Individuals** – PRC Section 21092.2 also *requires* notice of the availability of a draft negative declaration to be mailed to any person who has filed a written request for notification with the lead agency.
- **Agency Consultation on Draft Negative Declaration** – PRC Section 21091 and Guidelines Section 15073 *require* that the proposed negative declaration and its initial study be attached to the Notice of Intent and sent to every responsible and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project for review and comment.
- **Additional Agency Consultation** – PRC Section 21092.4 further *requires* the lead agency for a project which would have statewide, regional, or areawide significance to consult with the regional transportation planning agency and public agencies that have transportation facilities which would be affected.
- **Review and Consultation Period** – The preceding notice and consultation opportunities are intended to occur simultaneously. Pursuant to PRC Section 21091 and Guidelines Section 15073, agencies and the public *must* be afforded at least 20 days to review and comment on the negative declaration. When one or more of the responsible or trustee agencies is a state agency, or when a project is of statewide, regional, or areawide environmental significance, as defined in Guidelines Section 15206, a copy of the negative declaration *must* be sent to the State Clearinghouse, and *should* be sent to the appropriate metropolitan area council of governments. In these situations, the public review period *shall* be at least as long as the review period established by the State Clearinghouse (normally 30 days).
- **Comments** – When considering whether to approve a project, the lead agency *must* consider the comments received during its consultation and review periods together with the negative declaration (Guidelines Section 15074). However, unlike with an EIR, these comments are *not required* to be attached to the negative declaration, nor must the lead agency make specific written responses to public agencies. However, the lead agency must notify in writing any public agency which comments on a proposed negative declaration of any public hearing for the project for which the document was prepared.
- **Substitution of Mitigation Measures** - PRC Section 21080(f) and CEQA Guidelines Section 15074.1 provide that the lead agency may, prior to project approval, delete mitigation measures from a mitigated negative declaration and substitute for them other measures which the lead agency determines are equivalent or more effective. The lead agency is *required* to hold a public hearing on the matter and adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment. If a public hearing is already being held to consider the project approval, no separate hearing is required.
- **Notice of Determination** – A local agency which approves or determines to carry out a project for which a negative declaration was adopted *must* file a Notice of Determination with the county clerk within 5 days of its action (PRC Section 21152 and Guidelines Section 15075). The notice *must* be posted by the clerk within 24 hours of receipt, remain posted for 30 days, and, when the posting period is over, returned to the local agency with certification

of its posting. If the project also requires discretionary approval from a state agency, the notice **must** also be filed with the Office of Planning and Research (Guidelines Section 15075).

- **State Agency Notice of Determination** – A state agency which approves or determines to carry out a project for which a negative declaration was adopted **must** file a Notice of Determination with the Office of Planning and Research (PRC Section 21108 and Guidelines Section 15075). A list of these notices shall be posted weekly by OPR and each list shall remain posted for at least 30 days.
- **Completion/Adoption of the Negative Declaration** - When a project proponent is other than a public agency, the Negative Declaration **must** be completed and adopted within 180 days from the date the lead agency accepted the application as complete. The project must be approved or denied within 60 days of adopting the Negative Declaration (PRC Section 21151.5).

Filing a Notice of Determination triggers a 30-day statute of limitations for litigation. If the notice is not filed with the County Clerk or OPR within 5 days, the statute of limitations becomes 180 days from the date the decision is made to carry out or approve a project, or where no formal decision is required, 180 days from the date the project is commenced (PRC Section 21167).

Environmental Impact Report (EIR)

An EIR is prepared when substantial evidence exists, based upon the whole record, that a project may have a significant adverse effect on the environment.

The following summarizes the consultation and notice requirements for EIRs in chronological order. Please refer to the cited sections of CEQA and the *CEQA Guidelines* for details about the requirements. This list begins after completion of the initial study and the decision to prepare an EIR.

- **Notice of Preparation** – PRC Section 21080.4 and Guidelines Section 15082 **require** that the lead agency immediately send notice of its determination to prepare an EIR to all affected responsible agencies, trustee agencies, and federal agencies. These agencies have 30 days to inform the lead agency with specific detail about the scope and content of the environmental information germane to the responsible, trustee, or federal agency's area of statutory responsibility which must be included in the EIR. PRC Section 21080.4 further provides that the lead agency **must** convene a scoping meeting to discuss these issues upon the request of any affected responsible or trustee agency. Upon request of a lead agency or project applicant, OPR **must** assist the scoping effort by identifying the various responsible, trustee, and federal agencies.
- **Early Public Consultation** – Prior to completing the draft EIR, *Guidelines* Section 15083 provides that the lead agency **may** also consult with other persons or organizations which may be concerned with the environmental effects of the project. PRC Section 21153 provides that, upon request of the applicant, the lead agency **must** consult with affected agencies and **may** consult with persons who the applicant believes will be concerned with environmental effects, as well as members of the public making a written request. Early consultation provides the opportunity to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report.
- **Consultation with Water Agencies** - Projects affecting water agencies and meeting the criteria established under CEQA Guidelines Section 15083.5 are **required** to send a notice of preparation to each public water system which serves or would serve the proposed project. These agencies have 30 days to submit a water supply assessment addressing the adequacy of the supply to support the demand created by the project. The lead agency **shall** include in the EIR the information provided by the water agency (up

to ten pages) and **must** determine whether projected water supplies will be sufficient to meet the demand of the project, in addition to existing and planned future uses.

- **Notice of Completion** – PRC Section 21161 and Guidelines Section 15085 **require** the lead agency to file a Notice of Completion with OPR as soon as a draft EIR is completed. Pursuant to the Guidelines, this notice can be combined with the cover form required by the State Clearinghouse for EIRs submitted for state review.
- **Public Review of Draft EIR** – Guidelines Section 15087 **requires** that the lead agency give public notice of the availability of a draft EIR by one of several methods at the same time that it submits the Notice of Completion to OPR. Notice **must** also be sent to affected responsible, trustee, and federal agencies. The method and contents of this notice are prescribed by Section 15087 and PRC Section 21092. PRC Section 21092 **requires** additional notice for waste burning projects.
- **Posting of Notice** – PRC Section 21092.3 **requires** the above notice to be posted for 30 days in the office of the county clerk of each county in which the project will be located.
- **Notice to Individuals** – PRC Section 21092.2 **requires** notice of the availability of a draft EIR to be mailed to any person who has filed a written request for notification with the lead agency.
- **Agency Consultation** – When a draft EIR is completed, Guidelines Section 15086 **requires** the lead agency to consult with the affected responsible, trustee, and federal agencies, as well as any person which the lead agency believes has expertise in the area, and request comments on the draft EIR. PRC Sections 21104 and 21153 **require** the lead agency to also consult with any city or county which borders the city or county within which the project is proposed.
- **Additional Agency Consultation** – PRC Section 21092.4 further **requires** the lead agency

for a project which would have statewide, regional, or areawide significance to consult with the regional transportation planning agency and public agencies that have transportation facilities which would be affected.

- **Caltrans Scoping Meeting** – PRC Section 21083.9 specifies that when so requested by Caltrans, a lead agency **must** call at least one scoping meeting prior to completing an EIR to discuss any proposed project which may affect highways or other Caltrans facilities.
- **Department of Fish and Game** – PRC Section 21104.2 **requires** state lead agencies to consult, and obtain written findings from, the Department regarding the potential impacts of a project on endangered or threatened species.
- **Review and Consultation Period** – The preceding notice and consultation opportunities, beginning with “Public Review of Draft EIR,” are intended to occur simultaneously. Pursuant to Guidelines Section 15105, the period for public and agency review of and consultation on a draft EIR shall not be less than 30 days, nor should it be longer than 60 days except under unusual circumstances. When a draft EIR is submitted to the State Clearinghouse, the review period shall not be less than 45 days, unless a shorter period of not less than 30 days is approved by the State Clearinghouse.

Draft EIRs which **must** be submitted to the State clearinghouse for review include: EIRs prepared by a state agency; those prepared by a public agency where a state agency is a responsible or trustee agency; those prepared for a project of statewide, regional, or areawide environmental significance; and draft EIRs prepared pursuant to NEPA. Projects of statewide, regional, or areawide significance are defined in *Guidelines* Section 15206.
- **Comments on Draft EIR** – PRC Section 21091 requires the lead agency to include in the final EIR responses to comments which describe the disposition of any significant effects brought up by commenters. PRC Section 21092.5 further

requires that written responses to the comments submitted by public agencies be provided to those agencies at least 10 days prior to certification of the final EIR.

- **Recirculation** – PRC Section 21092.1 and Guidelines Section 15088.5 *require* an EIR to be recirculated to responsible and trustee agencies for consultation and new public notice given whenever significant new information has been added to the EIR after the draft has been available for review, but prior to certification of the final EIR. The review and consultation period is the same as for a draft EIR. “Significant new information” is defined in *Guidelines* Section 15088.5.
- **Notice of Determination** – A local agency which approves or determines to carry out a project for which an EIR was certified *must* file a Notice of Determination with the county clerk within 5 days of its action (PRC Section 21152 and *Guidelines* Section 15094). The notice *must* be posted by the clerk within 24 hours of receipt, remain posted for 30 days, and, when the posting period is over, returned to the local agency with certification of its posting. If the project also requires discretionary approval from a state agency, the notice *must* also be filed with the Office of Planning and Research (*Guidelines* Section 15094).
- **State Agency Notice of Determination** – A state agency which approves or determines to carry out a project for which an EIR was certified *must* file a Notice of Determination with the Office of Planning and Research (PRC Section 21108 and *Guidelines* Section 15094). A list of these notices *must* be posted weekly by OPR and each list shall remain posted for at least 30 days.
- **Statute of Limitations** – Filing a Notice of Determination triggers a 30-day statute of limitations for litigation. If the notice is not filed with the County Clerk or OPR within 5 days, the statute of limitations becomes 180 days from the date the decision is made to carry out or approve a project, or where no formal decision is required, 180 days from the date the project is commenced (PRC Section 21167).
- **Copy of Final EIR** – *Guidelines* Section 15095 *requires* the lead agency to file a copy of the final EIR with the planning agency of any city or county where significant environmental effects may occur. In addition, the applicant *must* be required to provide a copy of the certified final EIR to each responsible agency.
- **Completion/Certification of the EIR** – When a project proponent is other than a public agency, the EIR *must* be completed and certified within one year from the date when the lead agency accepted the application as complete. The one year limit may be extended once for a period of not more than 90 days upon consent of the applicant and the lead agency.

SUMMARY LIST



Exempt Projects

- No consultation or public notice required by CEQA.
- Filing of a Notice of Exemption is optional.

Initial Study

- Preconsultation with responsible and trustee agencies is optional.
- Consultation with responsible and trustee agencies is required.
- Consult with the applicant over mitigation or avoidance of potentially significant effects where pertinent.

Negative Declaration

Consultation requirements of the Initial Study apply, plus the following:

- Public notice of the availability of the draft negative declaration is required.
 - Publish and mail notices.
 - Post notice with the County Clerk.
 - Provide notice to responsible, trustee, and other agencies.
 - Provide notice to individuals upon request.
- Consultation is begun with the notice of availability.
 - Consult with responsible and trustee agencies.
 - Consult with transportation agencies (for projects of statewide, regional, or areawide significance).
- A public hearing must be held on any proposed changes to mitigation measures.
- A Notice of Determination must be filed after approving a project for which a negative declaration was adopted.

Environmental Impact Report

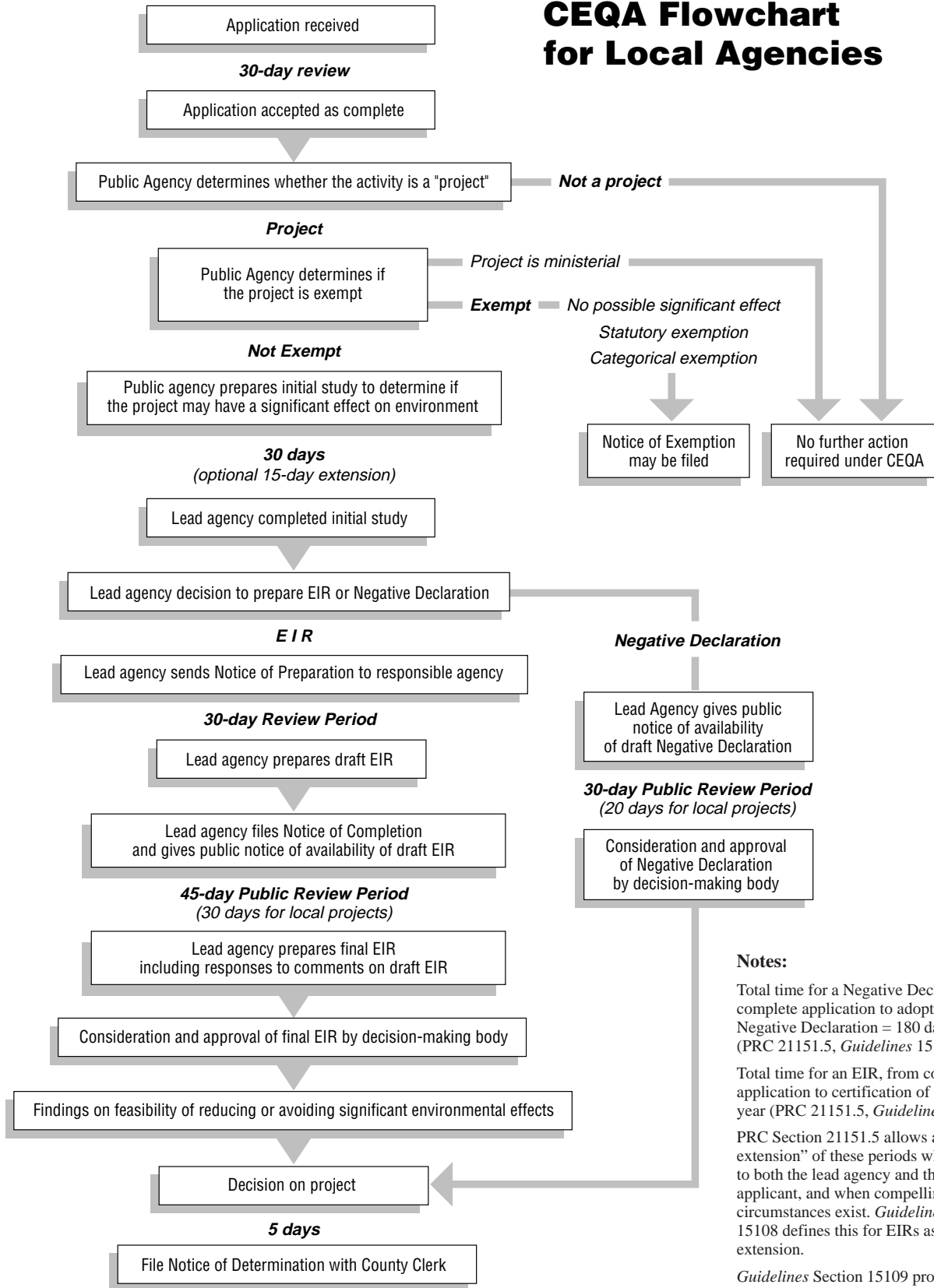
Consultation requirements of the Initial Study apply, plus the following:

- A Notice of Preparation must be sent to all affected responsible, trustee, and federal agencies and a scoping meeting held upon request.

- Early public consultation must be held with affected water system agencies.
- Early public consultation may be held with interested persons or organizations and must be held, at the request of the applicant, with affected agencies.

- A Notice of Completion must be filed with OPR when the draft EIR is completed.
- Public notice must be given of the availability of the draft EIR for review.
 - Publish and mail notices.
 - Post notice with the County Clerk.
 - Provide notice to all affected responsible, trustee, and federal agencies
 - Send notice of the draft EIR's availability to individuals upon request.
- Consultation begins at this time.
 - Consult with affected responsible, trustee, and federal agencies, cities and counties bordering the jurisdiction within which the project is located, as well as individuals with pertinent expertise.
 - Submit the draft EIR for a project involving a state agency or which is of statewide, regional, or areawide significance to the State Clearinghouse for distribution.
 - Consult with transportation agencies (for projects of statewide, regional, or areawide significance).
 - Hold a scoping meeting when requested by Caltrans.
 - State lead agencies must consult with the Department of Fish and Game.
- The EIR must be recirculated if significant new information has been added after the draft EIR was circulated for review and consultation, but before the final EIR is certified.
- Written draft responses to public agency comments must be provided to those agencies prior to certification of the EIR.
- A Notice of Determination must be filed after approving a project for which an EIR was certified.

CEQA Flowchart for Local Agencies



Bibliography



Guide to the California Environmental Quality Act, by Michael Remy, Tina Thomas, et al., Solano Press Books, P.O. Box 773, Point Arena, CA 95468, phone: (707) 884-4508. The CEQA practitioner's "Bible" is a highly respected and comprehensive discussion of the Act, including recent case law. It includes a copy of the current statutes and the *State CEQA Guidelines*.

Practice Under the California Environmental Quality Act, by Stephen L. Kostka and Michael H. Zischke, Continuing Education of the Bar, 2300 Shattuck Avenue, Berkeley, CA 94704, phone: (800) 924-3924. Concise, authoritative, and comprehensive, this two volume set is intended for use by both environmental planners and attorneys.

State Clearinghouse Handbook, Governor's Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, phone: (916) 322-3170. The requirements and procedures of the State Clearinghouse regarding the review of environmental documents and federal grants are described in detail in this handbook.

CEQA Deskbook, by Ronald E. Bass, Albert I. Herson, and Kenneth M. Bogdan, Solano Press Books, P.O. Box 773, Point Arena, CA 95468, phone: (707) 884-4508. This is a "how-to" manual offering practical advice on complying with CEQA's procedures and legal requirements. It includes the current statutes and State CEQA Guidelines.